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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LAMONT T. TARKINGTON
AND DARRIS ALLEN,

Defendants and Appellants.

B199860

(Los Angeles County
Super. Ct. No. MA 034011)

ORDER MODIFYING OPINION
AND DENYING REHEARING
(Carol C. Koppel, Judge)

[Change in Judgment]

THE COURT:

IT IS ORDERED that the opinion filed herein on December 9, 2008, be modified in the following particulars:

At the end of the last paragraph on page 15, add the following paragraph and a footnote, numbered as footnote 9:

As a consequence of our striking the gun use and gang enhancements, the defendants are subject to the consecutive one-year armed principal enhancement under section 12022, subdivision (a)(1), which applies to a principal, whether or not armed, if any

other principal was armed.⁹ We will direct the court to impose these enhancements on remand.

Add as footnote 9, the following text:

9. Section 12022, subdivision (a)(1), states in relevant part that “any person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless the arming is an element of that offense. *This additional term shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.*” (Italics added.) The court should have imposed and stayed these enhancements when it sentenced defendants. (*People v. Sinclair* (2008) 166 Cal.App.4th 848, 854.)

On page 16, delete the entire text under Disposition and replace it with the following:

The convictions are affirmed. The gang enhancements as to each defendant are reversed with directions that they be dismissed and that the 10-year sentences on those enhancements be stricken. The court is also directed to modify Tarkington’s sentence by striking the 10-year firearm use enhancement, imposing the consecutive one-year armed principal enhancement and staying the sentence on the burglary conviction. Allen’s sentence is also to be modified by striking the 10-year firearm use enhancement, imposing the consecutive one-year armed principal enhancement and staying the sentence on the burglary conviction. The trial court is directed to prepare respective abstracts of judgment accordingly and forward certified copies of the corrected abstracts to the Department of Corrections and Rehabilitation.

This modification constitutes a change in the judgment.

Respondent's petition for rehearing is denied.

MALLANO, P. J.

ROTHSCHILD, J.